



Corporation Counsel



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May 10, 2023

VIA ECF

Honorable Lewis A. Kaplan
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Application GRANTED. Permission to file these documents under seal was previously granted per ECF No. 27. SO ORDERED.

Dated: 7/17/2023

A handwritten signature in blue ink that reads "Stewart D. Aaron".

Re: *Jose Joseph v. City of New York, et al.* 22 Civ. 9670 (LAK) (SDA)

Your Honor:

I am an Assistant Corporation Counsel in the Office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and the attorney for Defendants City of New York, Alexander L. Shopiro, Saher Y. Abumalouh, Michael J. McDermott, Michel T. Brosnan, and Marlon O. Larin in the above-referenced matter. Defendants respectfully write, with Plaintiff's consent, to request permission to file certain documents under seal and in redacted form in connection with their Rule 12(c) motion, which will be filed on May 12, 2023.

A) Background

By way of background, Plaintiff—who was a New York City Police Department officer at the time of the incident—alleges that the defendants, among other things, falsely arrested and maliciously prosecuted him after a complaining witness accused him of committing strangulation in the second degree. ECF No. 1. Defendants answered the Complaint on March 6, 2023 and incorporated into their Answer, among other things, a bodycam video captured by Officer Amanda DiFrancesco—an officer who spoke to the victim on the date of the incident—and a domestic incident report (“DIR”) signed by the victim. ECF No. 19. Defendants moved to file the bodycam video under seal annexed as an exhibit to their answer and to redact the victim’s address and name, except for her initials, from the DIR on March 6, 2023. ECF No. 20. The Honorable Stewart D. Aaron granted Defendants’ request on March 13, 2023. ECF No. 27.

On April 4, 2023, Defendants filed a proposed briefing schedule for their anticipated judgment for a motion on the pleadings. ECF No. 28. That briefing schedule was endorsed the following day and Defendants’ current deadline to file their Rule 12(c) motion is May 12, 2023. ECF No. 30. Defendants intend to submit two exhibits to their Rule 12(c) motion—Officer DiFrancesco’s bodycam and the DIR, both of which are currently filed under seal before Judge

Aaron as exhibits to Defendants' Answer.¹ Because those exhibits have been incorporated into Defendants' Answer, the Court may consider them when ruling on Defendants motion for a judgment on the pleadings. *Adams v. City of New York*, 2003 U.S. Dist. LEXIS 5012, at *3-4 (S.D.N.Y. Mar. 31, 2003) (considering on a Rule 12(c) motion two NYPD Internal Affairs Bureau reports attached to the City of New York's answer, but not to the plaintiff's complaint). Accordingly, Defendants now seek permission to file Officer DiFrancesco's bodycam video under seal and to file the DIR in redacted form as exhibits to their Rule 12(c) motion.

B) Governing Law

In *Lugosch v. Pyramid Co.*, 435 F3d 110, 118-120 (2d Cir. 2006), the Second Circuit established a three-part framework for determining when a party may file a document under seal. First, a Court must consider whether the document at issue is a "judicial document." *Id.* at 115. "[A] document filed with the court is a judicial document if it would reasonably have the *tendency* to influence a district court's ruling on a motion...." *Olson v. Major League Baseball*, 29 F.4th 59, 89 (2d Cir. 2022) (italics in original) (citations and internal quotations omitted). If a document is judicial, then it is entitled to a presumption of access under federal common law and the First Amendment. *Lugosch*, 435 F3d 110 at 113. Once a court determines that a document is entitled to a presumption of access, it must consider what weight to afford that presumption. *Id.* at 119. The presumption is weightiest when the document at issue "can fairly be assumed to play a role in the court's deliberations" on a dispositive motion. *Id.* at 123.

"Finally, after determining the weight of the presumption of access, the court must balance competing considerations against it." *Lugosch*, 435 F3d 110 at 120. A court will seal a record if doing so "is necessary to preserve higher values and only if the sealing order is narrowly tailored to achieve that aim." *Id.* at 124. The Second Circuit has "previously held that 'the privacy interests of innocent third parties . . . should weigh heavily in a court's balancing equation.'" *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) (quoting *Gardner v. Newsday, Inc. (In re Newsday, Inc.)*, 895 F.2d 74, 79-80 (2d Cir. 1990)).

C) Argument

Here, the Court should grant Defendants leave to file Officer DiFrancesco's bodycam under seal and to redact the victim's address and name, except for her initials, from the DIR because the proposed remedies are narrowly tailored to protect the third party victims' privacy interests. The body camera footage shows the victim's interaction with officers who responded to her 911 call and depicts injuries to her neck and chin, shows the inside of her mother's home, and captures her statements about a past instance of domestic abuse committed by a non-party. Defendants have a strong interest in withholding the complaining witness's full name and filing the bodycam video under seal because the public disclosure of such sensitive information could disincentivize others from reporting domestic violence. This is especially true given that the victim is a non-party and has therefore not put her identity at issue in this matter.

¹ In accordance with the Court's individual rules, Defendants have submitted the proposed redacted version of the DIR as an exhibit to this letter and will submit Officer DiFrancesco's bodycam to chambers under separate cover.

The proposed remedy—redacting the victim’s address and name, except for her initials, from the DIR and filing the bodycam videos under seal—is narrowly tailored to protect the victim’s privacy. Redacting the DIR in the proposed manner would protect the victim’s identity while allowing the public to view her allegations. This comports with the rationale behind the presumption of public disclosure, as it would allow members of the public to “assess the correctness” of a judge’s decision made based on the DIR. *Lugosch*, 435 F.3d 110 at 123 (explaining that “[i]f the rationale behind access is to allow the public an opportunity to assess the correctness of the judge’s decision . . . documents that the judge *should* have considered or relied upon, but did not, are just as deserving of disclosure as those that actually entered into the judge’s decision.). Though the public would not be able to view any part of the bodycam footage if it were filed under seal, there is no expedient way to remove only the sensitive information from the footage. Even if the Defendants could remove only the sensitive information, the remaining portions of the videos would be virtually useless to any member of the public seeking to assess the merits of this case.

Accordingly, Defendants respectfully request leave to file Officer DiFrancesco’s bodycam video under seal and to redact the victim’s address and name, except for her initials, from the DIR.

Thank you for your consideration herein.

Respectfully submitted,

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CC: **BY ECF**
All counsel of record

Incident	Agency: NYPD	A	New York State DOMESTIC INCIDENT REPORT	ORI:	Incident #			
	Reported Date 12/19/0900	Time (24 hours) 12/19/0730	Occurred Date 12/19/0900	Time (24 hours) 12/19/0730	<input type="checkbox"/> Officer Initiated <input checked="" type="checkbox"/> AUCAD (NYC)	<input checked="" type="checkbox"/> Radio Run <input type="checkbox"/> Walk-in	Complaint # DIA9120100040	
Victim (P1)	Address (Street No., Street Name, Bldg. No., Apt No.) 2384 WATSON AVE			City, State, Zip BRONX NY				
	Name (Last, First, M.I.) (Include Alias) [REDACTED]			DOB [REDACTED]	Age 23	<input type="checkbox"/> Female <input checked="" type="checkbox"/> Male		
	Address [REDACTED]					<input type="checkbox"/> Self-Identified		
	City, State, Zip NY NY 10034							
	How can we safely contact you? PHONE					Language: ENGLISH		
Suspect (P2)	Name (Last, First, M.I.) (Include Alias) JOSEPH JOSE			DOB [REDACTED]	Age 38	<input type="checkbox"/> Hispanic <input checked="" type="checkbox"/> Non-Hispanic <input type="checkbox"/> Unknown		
	Address (Street No., Street Name, Bldg. No., Apt No.) [REDACTED]					<input type="checkbox"/> Other Identifier		
	City, State, Zip [REDACTED]					<input type="checkbox"/> Female <input checked="" type="checkbox"/> Male		
	Do suspect and victim live together? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			Suspect/P2 present? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Self-Identified		
	Was suspect injured? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, describe: [REDACTED]			Was suspect injured? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, describe: [REDACTED]		<input type="checkbox"/> Other Identifier		
	Suspect (P2) Relationship to Victim (P1) <input type="checkbox"/> Married <input checked="" type="checkbox"/> Intimate Partner/Dating <input type="checkbox"/> Formerly Married <input type="checkbox"/> Former Intimate Partner			<input type="checkbox"/> Other: [REDACTED]		<input type="checkbox"/> Other Identifier		
Victim Interview	Emotional condition of VICTIM? <input checked="" type="checkbox"/> Upset <input type="checkbox"/> Nervous <input checked="" type="checkbox"/> Crying <input type="checkbox"/> Angry <input type="checkbox"/> Other:							
	What were the first words that VICTIM said to the Responding Officers at the scene regarding the incident? IM THE ONE WHO CALLED 911							
	Did suspect make victim fearful? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe: [REDACTED]							
	Suspect Threats? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, Threats to: <input type="checkbox"/> Victim <input type="checkbox"/> Child(ren) <input type="checkbox"/> Pet <input type="checkbox"/> Commit Suicide <input type="checkbox"/> Other Describe: [REDACTED]							
	Weapon Used? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Gun: <input type="checkbox"/> Yes <input type="checkbox"/> No Other, describe: [REDACTED]							
	Access to Guns? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe: [REDACTED]							
	Injured? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe: [REDACTED]							
	Strangulation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Loss of Consciousness <input type="checkbox"/> Urination/Defecation <input type="checkbox"/> Red eyes/Pectenia <input type="checkbox"/> Sore Throat <input checked="" type="checkbox"/> Breathing Changed <input type="checkbox"/> Difficulty Swallowing							
	In Pain? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe: [REDACTED]							
	Visible Marks? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe: [REDACTED]							
Suspect	What did the SUSPECT say (Before and After Arrest): NOT PRESENT							
	710.30 completed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No							
Witnesses	Child/Witness (1) Name (Last, First, M.I.) DOB: NIA	Child/Witness(1) Address (Street No., Name, Bldg./Apt)		City, State, Zip		Phone:		
	Child/Witness (2) Name (Last, First, M.I.) DOB: [REDACTED]	Child/Witness(2) Address (Street No., Name, Bldg./Apt)		City, State, Zip		Phone:		
Incident Narrative	Briefly describe the circumstances of this incident: AT TPO PI STATES HER AND P2, WHO IS HER BOYFRIEND, GOT INTO AN ARGUMENT ABOUT HIM BEING INTO PAIN AND COULD NOT DRIVE. PI ORDERED AN UBER AT WHICH TIME P2 GRABBED HER PHONE, BEGAN PUNCHING HER IN CLOTHED FIST TO RIBS AND BACK, AND CHOKED HER BY PUTTING BOTH HIS HANDS AROUND HER NECK CAUSING HER TO LOSE CONSCIOUSNESS AND PI HAS VISIBLE INJURIES. PI STATES P2 HAS NEVER BEEN LIKE THIS OF HER ADDRESS. PI STATES P2 HAS NEVER BEEN LIKE THIS BEFORE. PI RMA ACR# 8053051 136 GAMBLE # 8109 ① RED NISSAN SUV ② FACEBOOK IS SNAPCHAT ③ CLUBS IN THE BRONX ④ NYPD TD3 TAB LOG# 2009-42981							
Evid.	DiR Repository checked? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Order of Protection Registry checked? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Order of Protection in effect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Refrain <input type="checkbox"/> Stay Away		Destruction of Property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	<input checked="" type="checkbox"/> Evidence Present? <input type="checkbox"/> Yes <input type="checkbox"/> No	Photos taken: <input checked="" type="checkbox"/> Victim Injury <input type="checkbox"/> Suspect Injury	Other Evidence: <input type="checkbox"/> Damaged Property <input type="checkbox"/> Videos <input type="checkbox"/> Electronic Evidence <input type="checkbox"/> Other:		If yes, Describe: [REDACTED]			
Offense	Offense Committed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Was suspect arrested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Offense 1 STRANGULATION	Law (e.g. PL)	Offense 2		Law (e.g. PL)	
	If no, explain: NOT PRESENT			NYS DOMESTIC AND SEXUAL VIOLENCE HOTLINE 1-800-942-6906				
	POLICE COPY (Please make a copy for DA's office if appropriate)							
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Agency:	NYPD	ORI:	Incident #	Complaint #
Prior History	Describe Victim's prior domestic incidents with this suspect (Last, Worst, First): NO PRIORITY DIR			
If the Victim answers "yes" to any questions in this box refer to the NYS Domestic and Sexual Violence Hotline at 1-800-942-6906 or Local Domestic Violence Service Provider: ()				
Has Suspect ever: Threatened to kill you or your children? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Strangled or "choked" you? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Beaten you while you were pregnant? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Is suspect capable of killing you or children? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Is suspect violently and constantly jealous of you? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Has the physical violence increased in frequency or severity over the past 6 months? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is there reasonable cause to suspect a child may be the victim of abuse, neglect, maltreatment or endangerment? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, the Officer must contact the NYS Child Abuse Hotline Registry # 1-800-635-1522.				
Was DIR given to the Victim at the scene? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No if NO, Why:		Was Victim Rights Notice given to the Victim? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No if NO, Why:		
Signatures:				
Reporting Officer (Print and Sign include Rank and ID#)		Supervisor (Print and Sign include Rank and ID#)		

STATEMENT OF ALLEGATIONS/SUPPORTING DEPOSITION

* Officers are encouraged to assist the Victim in completing this section of the form.

Suspect Name (Last, First, M.I.)

I, T. [REDACTED] (Victim/Deponent Name) state that on 12/01/19. (Date)
 at [REDACTED] (Location of incident) in the County/City/Town/Village NEW YORK, NY
 of the State of New York, the following did occur: I was at an after party with Jose, everything was fine until we went to his car and I decided to order an Uber because Jose was under the influence. I know that because he started to fall asleep. When my Uber arrived Jose woke up and snatched the phone out of my hand and proceeded to slap me and choke me until I lost consciousness. When I woke up Jose was hitting me while holding me in [REDACTED] his other arm. The Uber driver called my phone and Jose told the driver to cancel. After he hung up he punched me on the sides and proceeded to choke me and dig his nails into my skin. He told me never to order an Uber again while I am with him. I begged him multiple times to stop.

(Use additional page as needed)

False Statements made herein are punishable as a Class A Misdemeanor, pursuant to section 210.45 of the Penal Law.

2 T.J. [REDACTED]
 Victim/Deponent Signature

12/1/19
 Date

Note:

Whether or not this form is signed, this DIR Form will be filed with Law Enforcement.

Page 2
 or 2

Witness or Officer Signature

Date

Interpreter Signature and Interpreter Service Provider Name
 Interpreter Requested Yes No Interpreter Used Yes No

Date

POLICE COPY (Please make a copy for DA's office if appropriate).

NYS DOMESTIC AND SEXUAL VIOLENCE HOTLINE 1-800-942-6906

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